
SUPREME COURT
OF LOUISIANA

DOCKET NO. 2007-C-2224
(civil case)

PARMA MATTHIS HOWARD and JANE MATTHIS SMITH,
Applicants,

v.

ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND,
Respondent.

WRIT OF REVIEW TO THE COURT OF APPEAL,
FOURTH CIRCUIT, PARISH OF ORLEANS
DOCKET NO. 2006-CA-1276

**MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF ON BEHALF OF
AMERICAN COUNCIL ON EDUCATION, ASSOCIATION OF AMERICAN
UNIVERSITIES, NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND
UNIVERSITIES, AMERICAN ASSOCIATION OF COMMUNITY COLLEGES,
ASSOCIATION OF JESUIT COLLEGES AND UNIVERSITIES, AND NATIONAL
ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES
IN SUPPORT OF THE POSITION OF THE ADMINISTRATORS OF THE TULANE
EDUCATIONAL FUND, RESPONDENT**

Dennis H. Blumer, Esq.
(Pro Hac Vice Application Pending)
Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339
Telephone: (202) 857-6000
Facsimile: (202) 857-6395

Michael Rubin, Esq. (La. Bar No. 10833)
McGlinchey Stafford PLLC
301 Main Street
One American Place 14th Floor
Baton Rouge, LA 70825
Tel: (225) 382-3617
Fax: (225) 343-3076

Ada Meloy, Esq.
(Pro Hac Vice Application Pending)
American Council on Education
One Dupont Circle NW, 8th Floor
Washington, DC 20036-1193
Tel: (202) 939-9361
Fax: (202) 833-4762

Attorneys for Amici Curiae

NOW INTO COURT COMES the American Council on Education, Association of American Universities, National Association of Independent Colleges and Universities, American Association of Community Colleges, Association of Jesuit Colleges and Universities, and National Association of State Universities and Land-Grant Colleges (collectively “Movants”), who respectfully move as follows:

1.

Movants desire to submit an *amicus curiae* brief in support of the original brief of Administrators of the Tulane Educational Fund, regarding the ruling of the Louisiana Court of Appeal for the Fourth Circuit in *Howard v. Administrators of the Tulane Educational Fund*, 06-1276 (La. App. 4 Cir. 10/22/07); 970 So. 2d 21.

2.

The deadline for *amicus curiae* briefs in support of Administrators of the Tulane Educational Fund’s original brief is April 7, 2008. This Motion for Leave is therefore timely under Rule VII, Section 12 of the Rules of the Supreme Court of Louisiana.

3.

Movants’ *amicus curiae* brief is conditionally filed herewith, as required pursuant to Rule VII, Section 12 of the Rules of the Supreme Court of Louisiana.

4.

Movants respectfully seek leave to file an *amicus curiae* brief because: (1) there are matters of fact and law that might otherwise escape the Court’s attention; and (2) it has substantial, legitimate interests that will likely be affected by the outcome of this case and which interests will not be adequately protected by those already party to the case. The six Movants represent a broad and comprehensive spectrum of American higher education institutions, including public and private colleges, land grant institutions, universities, two-year colleges, and religious institutions.

5.

Amicus Curiae American Council on Education (“ACE”) represents all sectors of American higher education – public and private, large and small, denominational and non-denominational. Founded in 1918, ACE has approximately 1,800 members, which include a substantial majority of the colleges and universities in the United States. It serves as a consensus

leader on key issues and seeks to influence public policy through advocacy, research, and program initiatives.

6.

Amicus Curiae Association of American Universities (“AAU”) was founded in 1900 by a group of 14 universities offering the Ph.D. degree. The AAU currently consists of 62 leading research universities in the United States and Canada. The association assists members in developing national policy positions on issues that relate to academic research, graduate and professional education, and the transfer of innovative technology from university to industry.

7.

Amicus Curiae National Association of Independent Colleges and Universities (“NAICU”) is an association of nearly 1,000 member colleges and associations that represent the interests of private colleges and universities. Members include traditional liberal arts colleges, major research universities, comprehensive universities, church- and faith-related institutions, historically black colleges, single-sex colleges, art institutions, two-year colleges, and schools of law, medicine, engineering, business, and other professions.

8.

Amicus Curiae American Association of Community Colleges (“AACC”) is the primary advocacy organization for the nation’s more than 1,100 two-year, degree-granting institutions. Organized in 1920, AACC promotes the causes of its member colleges through, among other things, legislative advocacy, monitoring of national issues and trends, and research and publication of news and scholarly analysis.

9.

Amicus Curiae Association of Jesuit Colleges and Universities (“AJCU”) represents the 28 Jesuit higher education institutions throughout the United States. AJCU is a voluntary association whose mission is to enhance quality Jesuit higher education throughout the country while working together on common mission, purpose and goals.

10.

Amicus Curiae National Association of State Universities and Land-Grant Colleges (“NASULGC”), founded in 1887, is the nation’s oldest higher education association. NASULGC’s members include 214 institutions in all 50 states, the U.S. territories, and the

District of Columbia. Among their number are 17 historically black public institutions and 31 tribal colleges that became land-grant institutions in 1994 and are represented through the NASULGC membership of the American Indian Higher Education Consortium.

11.

Movants participate as *amicus curiae* only in cases that, in their estimation, raise issues of widespread importance for their members nationwide. The decision below implicates two such issues: (1) the importance of judicial deference to the reasoned and informed judgment of a college or university in the exercise of its academic expertise; and (2) the role of precatory language in interpreting donor intent.

12.

There is a longstanding tradition of judicial deference to university decisionmaking in academic matters. To ensure academic freedom, courts must preserve a university's ability to determine on academic grounds who may teach, what may be taught, how it shall be taught, and who may be admitted to study. A university's restructuring of its collegiate structure necessarily requires determinations involving educational expertise, and thus, lies at the very core of the academic freedom to which courts have afforded a degree of deference.

13.

Further, consistent with the Louisiana Civil Code, courts have long refused to interpret precatory language in a donation or will as creating a binding obligation on the donee. It is a deeply engrained principle in both Louisiana and in common law jurisdictions that where a donor conveys absolute ownership in unconditional language, courts will not infer conditions from precatory language absent an equally unconditional and absolute statement of the conditions. This principle has special significance for colleges and universities because precatory language often serves the time-honored role of permitting a donor to express his or her motivations or desires for a gift without hindering the recipient's discretion and ability to achieve its mission in a constantly evolving educational environment. Donor intent deserves the utmost respect, and it is the province of this Court to distinguish between conditional bequests and precatory language.

14.

The proposed brief of the six Movants will be of aid to the Court in bringing to its attention issues that directly impact Movants' members because charitable donations

substantially advance and are critical to the educational mission of colleges and universities. The contention that a university must account to descendants of a donor in perpetuity, subject to potential revocation, for a condition *inferred* decades or centuries after the gift, will have a devastating impact on higher education in Louisiana and throughout the United States.

15.

Movants have satisfied all criteria for the filing of an *amicus curiae* brief under Rule VII, Section 12 of the Rules of the Supreme Court of Louisiana.

THEREFORE, Movants pray for leave to file its *amicus curiae* brief conditionally filed herein.

Respectfully submitted,



Michael Rubin, Esq.
McGlinchey Stafford PLLC
301 Main Street
One American Place 14th Floor
Baton Rouge, LA 70825
Tel: (225) 382-3617
Fax: (225) 343-3076

Dennis H. Blumer, Esq.
[Pro Hac Vice Application Pending]
Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339
Telephone: (202) 857-6000
Facsimile: (202) 857-6395

Ada Meloy, Esq.
[Pro Hac Vice Application Pending]
American Council on Education
One Dupont Circle NW, 8th floor
Washington, DC 20036-1193
Tel: (202) 939-9361
Fax: (202) 833-4762

Attorneys for the Movants, AMERICAN COUNCIL ON EDUCATION, ASSOCIATION OF AMERICAN UNIVERSITIES, NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND UNIVERSITIES, AMERICAN ASSOCIATION OF COMMUNITY COLLEGES, ASSOCIATION OF JESUIT COLLEGES AND UNIVERSITIES, AND NATIONAL ASSOCIATION OF STATE UNIVERSITIES AND LAND-GRANT COLLEGES IN SUPPORT OF THE POSITION OF THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND, RESPONDENT

CERTIFICATE OF SERVICE

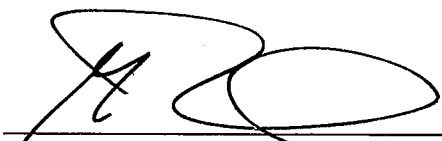
The undersigned certifies that copies of this Motion for Leave to File *Amicus Curiae* Brief of American Council on Education, Association of American Universities, National Association of Independent Colleges and Universities, American Association of Community Colleges, Association of Jesuit Colleges and Universities, and National Association of State Universities and Land-Grant Colleges in Support of the Position of the Administrators of the Tulane Educational Fund, Respondent, and the *Amicus Curiae* Brief of American Council on Education, Association of American Universities, National Association of Independent Colleges and Universities, American Association of Community Colleges, Association of Jesuit Colleges and Universities, and National Association of State Universities and Land-Grant Colleges in Support of the Position of the Administrators of the Tulane Educational Fund, Respondent, have been sent to the following known counsel of record by depositing a copy in the United States mail, postage prepaid and properly addressed:

Daniel J. Caruso
Simon, Pergine, Smith & Redfearn, L.L.P.
1100 Poydras Street, 30th Floor
New Orleans, LA 70163-3000
Attorneys for Applicants

Edward H. Bergin
Jones, Walker, Waechter, Poitevent, Carrère & Denègre, L.L.P.
201 St. Charles Avenue, 49th Floor
New Orleans, LA 70170-5100
Attorneys for Respondent

Shelley H. Provosty
Law Offices of Shelley H. Provosty, LLC
1100 Poydras Street, Ste. 3575
New Orleans, LA 70163
Attorneys for Amicus Curiae The Future of Newcomb College, Inc.

Dated Baton Rouge, Louisiana, this 7th day of April, 2008.



Michael Rubin

SUPREME COURT
OF LOUISIANA

DOCKET NO. 2007-C-2224
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PARMA MATTHIS HOWARD and JANE MATTHIS SMITH,

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Respondent.

WRIT OF REVIEW TO THE
COURT OF APPEAL, FOURTH CIRCUIT,
PARISH OF ORLEANS
DOCKET NO. 2006-CA-1276

ORDER

Considering the Motion for Leave to File *Amicus Curiae* Brief of American Council on Education, Association of American Universities, National Association of Independent Colleges and Universities, American Association of Community Colleges, Association of Jesuit Colleges and Universities, and National Association of State Universities and Land-Grant Colleges in Support of the Position of the Administrators of the Tulane Educational Fund, Respondent, filed herein,

IT IS HEREBY ORDERED THAT American Council on Education, Association of American Universities, National Association of Independent Colleges and Universities, American Association of Community Colleges, Association of Jesuit Colleges and Universities, and National Association of State Universities and Land-Grant Colleges be granted leave to file their *Amicus Curiae* Brief in Support of the Position of the Administrators of the Tulane Educational Fund, Respondent and their brief be now filed in this matter.

NEW ORLEANS, LOUISIANA, this _____ day of April, 2008.

JUSTICE, SUPREME COURT OF LOUISIANA

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ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND,
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***AMICUS CURIAE* BRIEF**
on behalf of

**AMERICAN COUNCIL ON EDUCATION, ASSOCIATION OF AMERICAN
UNIVERSITIES, NATIONAL ASSOCIATION OF INDEPENDENT COLLEGES AND
UNIVERSITIES, AMERICAN ASSOCIATION OF COMMUNITY COLLEGES,
ASSOCIATION OF JESUIT COLLEGES AND UNIVERSITIES, AND NATIONAL
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IN SUPPORT OF THE POSITION OF
THE ADMINISTRATORS OF THE TULANE EDUCATIONAL FUND, RESPONDENT**

Dennis H. Blumer, Esq.
(Pro Hac Vice Application Pending)
Arent Fox LLP
1050 Connecticut Avenue, N.W.
Washington, DC 20036-5339
Telephone: (202) 857-6000
Facsimile: (202) 857-6395

Michael Rubin, Esq. (La. Bar No. 10833)
McGlinchey Stafford PLLC
301 Main Street
One American Place 14th Floor
Baton Rouge, LA 70825
Telephone: (225) 382-3617
Facsimile: (225) 343-3076

Ada Meloy, Esq.
(Pro Hac Vice Application Pending)
American Council on Education
One Dupont Circle NW, 8th Floor
Washington, DC 20036-1193
Telephone: (202) 939-9361
Facsimile: (202) 833-4762

Attorneys for Amici Curiae

April 7, 2008

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